DISTRICT OF COLUMBIA
DOH OFFICE OF ADJUDICATION AND HEARINGS

DISTRICT OF COLUMBIA DEPARTMENT OF HEALTH Petitioner, v. CLOVERLAND GREEN SPRINGS DAIRY LIMITED Respondent	Case No.: I-00-11295

FINAL ORDER

I. Introduction

This case arises under the Civil Infractions Act of 1985 (D.C. Official Code §§ 2-1801.01 *et seq.*) and Title 20 Chapter 9 of the District of Columbia Municipal Regulations ("DCMR"). By Notice of Infraction (No. 00-11295) served May 7, 2002, the Government charged Respondent Cloverland Green Springs Dairy Limited with a violation of 20 DCMR 900.1 which prohibits, with certain exceptions, motor vehicles from idling their engines for more than three (3) minutes while parked, stopped or standing. The Notice of Infraction charged that Respondent violated 20 DCMR 900.1 on May 3, 2002 while parked at 1611 Rhode Island Avenue, N.E., and sought a fine of $500.

On May 17, 2002, this administrative court received Respondent's answer of Admit with Explanation pursuant to D.C. Official Code § 2-1802.02, along with a request for a reduction or suspension of the authorized fine. In the letter accompanying its answer, Respondent, through its distribution manager, explained that the violation occurred while its driver was making a delivery. Respondent stated that its trucks are required by law to deliver dairy products at 40

degrees Fahrenheit or lower. Due to the temperature swings resulting from opening and closing the truck's cargo doors during deliveries, the truck's cooling system usually runs "for a large part of the day." Respondent also stated that, although it was unaware of the requirements of § 900.1 prior to the Notice of Infraction being issued, it promptly advised its drivers of the requirements of § 900.1.

By order dated June 10, 2002, I permitted the Government an opportunity to respond to Respondent's answer and request within fourteen (14) calendar days of the order's service date. The Government elected not to respond. Based upon the entire record in this matter, I now make the following findings of fact and conclusions of law:

II. Findings of Fact

1. By its plea of Admit with Explanation, Respondent Cloverland Green Springs Dairy has admitted violating 20 DCMR 900.1 on May 3, 2002 at 1611 Rhode Island Avenue, N.E.

2. On May 3, 2002, Respondent idled the engine of its truck for more than three (3) minutes while parked at 1611 Rhode Island Avenue, N.E.

3. Respondent's admitted violation of § 900.3 occurred while its driver was making a delivery. Respondent's trucks are required by law to deliver dairy products at a certain temperature.[1] Due to the temperature swings resulting from opening and closing the truck's cargo doors during deliveries, the truck's cooling system usually runs "for a large part of the day."

[1] *See generally* 7 CFR Pt. 58 (United States Department of Agriculture regulations relating to the storage and transportation of dairy products); 23 DCMR Chapter 25 (regulation of food products).

4. Respondent was not aware of the provisions of 20 DCMR 900.1 prior to its receipt of the Notice of Infraction.

5. Respondent has accepted responsibility for its unlawful conduct.

6. Upon receipt of the Notice of Infraction, Respondent promptly advised all its drivers of the requirements of 20 DCMR 900.1.

7. There is no evidence in the record of a past history of non-compliance by Respondent.

III. Conclusions of Law

1. Respondent violated 20 DCMR 900.1 on May 3, 2002. A fine of $500 is authorized for a first violation of this regulation. 16 DCMR §§ 3201.1(b)(1) and 3224.3(aaa).

2. Respondent has requested a reduction or suspension of the authorized fine. Under these circumstances, a reduction, but not a suspension, of the fine is appropriate. Respondent's assertion that it had no prior knowledge of the proscriptions of 20 DCMR 900.1 is unavailing. As an entity doing business in the District of Columbia, Respondent is expected to be on notice of applicable District of Columbia laws, and is required to be in compliance with those laws – particularly those such as 20 DCMR 900.1 that have been in effect for years. *Accord Department of Health v. Good's Transfer, Inc.*, OAH Final Order, I-00-10436 at 3-4 (Final Order, February 1, 2001); *see also Shevlin-Carpenter Co. v. State of Minnesota*, 218 U.S. 57, 68 (1910) (noting ignorance of law is not an excuse, particularly where "[t]here is no element of deception or surprise in the law.").

3. Respondent also tacitly asserts that its driver may have needed to keep the truck running in order to maintain the prescribed temperature for its dairy product cargo during the delivery, suggesting a somewhat novel application of the "power takeoff" equipment exception to § 900.1's three (3) minute idling limitation. *See* 20 DCMR § 900.1(b) (operation of power takeoff equipment, including refrigeration systems, is an exception to § 900.1's idling limitation). This argument is also unpersuasive. As this administrative court has previously held, the power takeoff equipment exception in a delivery context turns on whether that equipment was in fact utilized in order to accomplish the delivery. *DOH v. Best Trucking Company, Inc.*, OAH No. I-00-10056 at 3-4 (Final Order, July 28, 2000) (holding that, while the power takeoff equipment exception under § 900.1(b) applies to vehicles utilizing such equipment for the purpose of making deliveries, it is not intended to provide a "blanket exception" for all vehicles making deliveries). In this case, Respondent has not provided substantive evidence that its delivery in any way required the use of power takeoff equipment. As such, the exception is inapplicable here.[2] *Id.*

4. In light of Respondent's acceptance of responsibility, prompt efforts to apprise its drivers of the requirements of § 900.1, and the lack of evidence in the record of a history of non-compliance, however, the fine will be reduced to $250. *See* D.C. Official Code §§ 2-1802.02(a)(2) and 2-1801.03(b)(6); 18 U.S.C. § 3553; U.S.S.G. § 3E1.1.

[2] With respect to the goods that remained on Respondent's truck awaiting delivery, there is no evidence in the record indicating that Respondent's truck had to be idling its engine in order for its refrigeration system to operate, or, alternatively, that a brief interruption of power to the refrigeration system (*e.g.*, by turning off the engine during a delivery), would necessarily have caused Respondent's cargo to drop below the required temperature.

IV. Order

Based upon the foregoing findings of fact and conclusions of law, and the entire record of this case, it is, hereby, this ___ day of _____, 2002:

ORDERED, that Respondent shall pay a fine in the total amount of **TWO HUNDRED FIFTY DOLLARS ($250)** in accordance with the attached instructions within twenty (20) calendar days of the date of mailing of this Order (fifteen (15) calendar days plus five (5) days for service by mail pursuant to D.C. Official Code §§ 2-1802.04 and 2-1802.05); and it is further

ORDERED, that, if Respondent fails to pay the above amount in full within twenty (20) calendar days of the date of mailing of this Order, by law, interest must accrue on the unpaid amount at the rate of 1½ +% per month or portion thereof, beginning with the date of this Order, pursuant to D.C. Official Code § 2-1802.03(i)(1); and it is further

ORDERED, that failure to comply with the attached payment instructions and to remit a payment within the time specified will authorize the imposition of additional sanctions, including the suspension of Respondent's licenses or permits pursuant to D.C. Official Code § 2-1802.03(f), the placement of a lien on real or personal property owned by Respondent pursuant to D.C. Official Code § 2-1802.03(i) and the sealing of Respondent's business premises or work sites pursuant to D.C. Official Code § 2-1801.03(b)(7).

FILED 07/10/02

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Mark D. Poindexter
Administrative Judge